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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 09-2361

RECEIVED  
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In Regard to the Matter of:

JOEL SCHNEIDER  
U.S. Magistrate Judge

Bayside State Prison  
Litigation  
VINCENT WASHINGTON

OPINION/REPORT  
OF THE  
SPECIAL MASTER

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

\* \* \* \*

WEDNESDAY, JUNE 17, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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17  
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2 A P P E A R A N C E S:

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1                             JUDGE BISSELL: The following  
2 constitutes the Special Master's determination  
3 regarding the complaint of Vincent Washington, docket  
4 number 09-2361.

5                             This opinion/report is being issued  
6 pursuant to the directives of the Order of Reference  
7 to a Special Master and the Special Master's  
8 Agreement and the guiding principles of law which  
9 underlie this decision to be applied to the facts  
10 upon which it is based as set forth in the jury  
11 instructions in the Walker and Mejias jury charges to  
12 the extent applicable to the allegations in  
13 Mr. Washington's case.

14                             And once again, I have considered the  
15 recent Third Circuit opinion in the Mejias case and  
16 have determined that that decision has not altered in  
17 any way the efficacy and applicability of the Mejias  
18 jury charges to the cases before me.

19                             As finalized after review under Local  
20 Civil Rule 52.1 the transcript of this oral opinion  
21 will constitute the written report required by  
22 paragraph seven of the Order of Reference to a  
23 Special Master.

24                             Mr. Washington resided in A Unit which  
25 on or about the second of August, 1997 was evacuated

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1 with the inmates there taken to the gym for the  
2 purpose of the search of the unit.

3                   Mr. Washington testifies with regard to  
4 two assaultive incidents, one occurring in his cell  
5 and the other occurring in the gym. His initial  
6 recollection was that these events occurred on two  
7 separate days. However, during the course of his  
8 cross-examination, while he still had, I think, a  
9 belief that that was more likely than not, I did  
10 notice from review of the transcript and recall from  
11 watching him here that there was some doubt  
12 ultimately in his mind as to whether these events  
13 happened on different days or on the same day. I  
14 find frankly that the evidence as a whole, including  
15 the presence of the SOG officers on A Unit with a  
16 reason for being there, has demonstrated to me that  
17 at worst Mr. Washington was somewhat confused with  
18 the passage of time among other things as to whether  
19 these incidents first in his cell and then in the gym  
20 happened on the same day or not. And I, therefore,  
21 draw the inference that they did, indeed, happen on  
22 the same day during the course of his extraction from  
23 his cell and then later while in the gym during the  
24 search of A Unit.

25                   He describes the assault and injuries

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1 that occurred to him at the time that the SOG  
2 officers entered his unit and that description begins  
3 at page 14. It's somewhat lengthy, but I think it's  
4 once again just as easy to read it as it is to  
5 paraphrase it because I have found here that he has  
6 testified truthfully and recounted the facts as they  
7 occurred.

8                           By the way this begins at page 14 line  
9     three.

10 He was asked what happened when they  
11 came into his cell.

12                           And he said: "Yeah, this is going to  
13 be a strip search. They asked my cellie to strip and  
14 told me to get under the bed.

15 "Question: Did you follow their order?

16                             "Answer: Yeah, I was getting under the  
17 bed, but I told them I couldn't get under the bed  
18 because that's where we had our buckets for washing  
19 our clothes. Our clothes, it's not like you got a  
20 dresser in there, so that's where we kept our stuff  
21 at. So I was telling him I had to move that first  
22 before I could get under there, and it must have  
23 angered him when I said that.

24                           "Question: When you said angered him,  
25 what happened?

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1                   "Answer: They beat me under there. I  
2 told them -- They pushed me under there, They got me  
3 under there. They beat me until I was under there,  
4 until my head hit the back of the wall. They got me  
5 under there.

6                   "Question: Tell me how you were  
7 beaten, Mr. Washington?

8                   "Answer: I was hit with sticks,  
9 kicked, punched until I got under that bed.

10                  "Question: Where on your body were you  
11 struck?

12                  "Answer: My legs, my legs were stomped  
13 on. They broke -- I think they broke my finger,  
14 because I never went to the hospital because you  
15 couldn't go to the hospital. And basically back of  
16 my head from running into the wall.

17                  "Question: How many officers did you  
18 see?

19                  "Answer: I seen three officers. I  
20 seen two in there, and I seen one outside the cell."

21                  Skipping something that's not  
22 particularly pertinent, but moving on down the page,  
23 15.

24                  "Question: And do you know how long  
25 that lasted approximately?

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1                   "Answer: Couple minutes, maybe  
2 seconds. Not long. I mean, maybe 20 seconds,  
3 25 seconds, 30 seconds, I guess, you know, not long.  
4 It don't take long to beat a guy."

5                   He was then asked to discuss his  
6 injuries at page 16.

7                   He says: "Okay. I was struck in the  
8 head, I was punched in the head, I was punched in the  
9 stomach, I was hit on the leg with sticks, but I was  
10 stomped on my right foot. And somewhere in between  
11 that I must have got hit on my hand or they pushed  
12 me, I don't know how it happened, they broke my  
13 finger."

14                  Which he identified as his pinky finger  
15 as demonstrated here before me. Mr. Ray continues  
16 his questions at the bottom of the page.

17                  "Question: Now, describe to us what you  
18 felt when you were struck in the head.

19                  "Answer: Pain.

20                  "Question: What type of pain?

21                  "Answer: Serious pain. Pain.

22                  "Question: Serious pain?

23                  "Answer: I was hurt. I was hurting.

24                  What do you want me to say? I was being beat up."

25                  Questioning continues.

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1                   "Question: Let me ask you this,  
2 Mr. Washington, as a result of being struck in the  
3 head, did you receive any bruising, any lumps?

4                   "Answer: Yeah, I had lumps. I had  
5 lumps on the back of my head. I had lumps.

6                   "Question: Where on the back of your  
7 head?

8                   "Answer: You know, on the back. They  
9 ran my head into the wall under the bed, you know, so  
10 it hurt. It's cement, it's cement. The wall is made  
11 out of cement, so it swelled up a little bit.

12                  "Question: And how long did that last?

13                  "Answer: Maybe a couple weeks it go  
14 down. It go down.

15                  "Question: Where else were you  
16 injured, Mr. Washington?

17                  "Answer: My feet. My feet was swelled  
18 up. Not my feet, my right foot. My left foot wasn't  
19 nothing wrong with it. My right foot swelled up and  
20 that affected me for a while. I went through  
21 something for a while. When I was in the halfway  
22 house, I had pus coming out of my right foot, you  
23 know, that bothered me for a while off and on. When  
24 I was in Riverfront, the doctor down there gave me  
25 some -- I guess you call them boots, health boots,

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1 because they were wide, triple E, because my feet had  
2 swelled up. My foot had swelled up."

3 So that's a description basically of  
4 the events that transpired to him there and the  
5 injuries that he suffered as a result of being pushed  
6 under the bed and acted upon in that way.

7 I'd like to make a comment here, and  
8 this is among my findings, of course. I did consider  
9 the testimony of Officer Hall who was the Bayside  
10 officer on duty in A Unit at the time. I'll have a  
11 little more to say about his testimony in a few  
12 moments, but I do recall him being asked at one point  
13 as to whether this was standard operating procedure  
14 for Bayside officers and whether there was any  
15 particular reason for putting an inmate under the  
16 bed. He testified that there wasn't. And even under  
17 some questioning from me, I believe, indicated that  
18 he didn't know whether this specifically was a SOG  
19 procedure or not.

20 While I realize each case must be  
21 decided on its own record, we have had testimony from  
22 several plaintiffs in this matter about being  
23 directed by SOGs, those who were not being currently  
24 processed, to get underneath the bunks and get  
25 underneath the beds. Now, surely that is a way of

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1 securing the absence of any interference or any  
2 actions or any aggression or however one might put it  
3 by the person in the cell who was not being  
4 processed. And so while it may be that this was not  
5 standard operating procedure for Bayside officers  
6 under normal circumstances dealing with inmates whom,  
7 of course, they would know on their units, I don't  
8 think that casts any doubt as such on the fact that  
9 it was employed by the SOGs here. And, therefore,  
10 this was indeed the technique that they employed here  
11 and when faced with, in their assessment I suppose, a  
12 failure of complete, immediate compliance without  
13 question, they took it out on Mr. Washington as he  
14 described. And I so find.

15 He talked then about the extraction to  
16 the gym, and beginning at line one on page 21.

17 "Answer: After they strip searched us  
18 in the cell, maybe three or four days later" (and  
19 I've said my own finding is that it was indeed on the  
20 same day) "I guess, I'm not sure, but they came back.  
21 And they took everybody out the cell and they marched  
22 us to the gym.

23 "Question: Did anything happen to you  
24 during the march to the gym?

25 "Answer: Not during the march to the

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1 gym, nothing happened, nothing.

2 "Question: You arrived at the gym?

3 "Answer: Yeah. Same, nothing  
4 happened.

5 "Question: What happened at the gym?

6 "Answer: They made us sit on the floor  
7 in a fetal position with your knees up and head down  
8 so you couldn't look up. They had you sitting down  
9 like this with your head down like this, couldn't  
10 look up because that wasn't, that isn't what they  
11 said to do. You had to keep your head down.

12 "Question: Did you do that?

13 "Answer: I did it as long as I could,  
14 but then my legs fell asleep.

15 "Question: When you say fell asleep,  
16 what do you mean?

17 "Answer: It was numb, pins and  
18 needles. I couldn't feel them no more, because we  
19 stayed there for a long time. I mean, like an  
20 hour-and-a-half, two hours. That's a long time in  
21 that position. My legs fell asleep, so I moved my  
22 legs to try to get the feeling back, and when I did  
23 that, two guards came over, picked me up and took me  
24 over to -- they got like a weight cage, it's a metal  
25 screen like, and they both had me by the arms, and

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1       they was cussing at me, yelling at me, whatever,  
2       telling me, you know, like I'm trying to be a tough  
3       guy, whatever. Slammed me into the metal cage,  
4       right, busted -- that's how my lip got busted, my eye  
5       swelled up, and that's when the police behind the  
6       cage spit in my face.

7                          "Question: Directly in your face?

8                          "Answer: They spit in my face. They  
9       told me to get on my knees. He spit through that  
10      cage, and I got up, and that's when they grabbed me  
11      again, but he spit in my face.

12                         "Question: Now, you said you suffered  
13      an injury on your lip?

14                         "Answer: They busted my lip when they  
15      slammed me into that cage.

16                         "Question: Any other injuries?

17                         "Answer: Just my lip and my eye,  
18      that's it.

19                         "Question: What was the injury on your  
20      eye?

21                         "Answer: It hit the cage, it swelled  
22      up.

23                         "Question: And how long -- you say the  
24      busted lip, how long did that last? How long was  
25      that busted?

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1                   "Answer: Swollen lip, a couple weeks,  
2 I guess. A couple weeks.

3                   "Question: How about the eye?

4                   "Answer: Same, couple weeks.

5                   "Question: At some point you were  
6 escorted back to the unit?

7                   "Answer: Yeah.

8                   "Question: Did anything happen to you  
9 during the escort back to the unit?

10                  "Answer: I got escorted back to the  
11 unit, we locked in. Amazingly I was just in for the  
12 duration then. I wasn't coming back out of that cell  
13 if I had my way, I wasn't coming back out the cell.  
14 When we had showers, they offered showers after maybe  
15 30 days. I didn't come out for no shower. My cellie  
16 came out, but I didn't come out.

17                  "Question: You were afraid to come  
18 out?

19                  "Answer: Yeah, because he got beat up  
20 for going out taking a shower. Just for -- so I  
21 wasn't going. I stunk for the rest of the -- you  
22 know, I just stayed in there."

23                  Further questioning: "Weren't you able  
24 to seek any medical treatment during the lockdown?

25                  "Answer: No.

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1                   "Question: How about after the  
2 lockdown?

3                   "Answer: After the lockdown, no, I  
4 left Leesburg. I didn't seek medical attention until  
5 I left Leesburg -- Bayside."

6                   And then he goes back into the boots  
7 situation.

8                   I want to continue with some further  
9 testimony about the nature of his injuries resulting  
10 from the incident in the gym. Page 36.

11                  "Question: So after they smashed your  
12 face into this cage, you bled, right, your nose, your  
13 lip?

14                  "Answer: Yeah.

15                  "Question: No medical attention,  
16 right?

17                  "Answer: No.

18                  "Question: They just let you bleed?

19                  "Answer: Yeah.

20                  "Question: Okay. And then they just  
21 sent you back to your unit afterwards?

22                  "Answer: Yeah.

23                  "Question: Bloody?

24                  "Answer: Yeah.

25                  "Question: And your foot, they had --

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1 your foot was hurting, so you had been limping  
2 because it hurt so much?

3 "Answer: Yeah."

4 Continuing.

5 "Question: So you go back to your unit,  
6 you're limping and your face is bloody and nobody  
7 says a word to you?

8 "Answer: My finger is broken. Nobody  
9 said nothing."

10 I also considered the testimony of  
11 Officer Hall before me here in which he stated that  
12 he did not see any of the persons returning to the  
13 unit either visibly bleeding or limping or otherwise  
14 demonstrating the injuries to which Mr. Washington  
15 testified. Once again, I observed Mr. Hall's  
16 demeanor. I believe he has testified before me in  
17 previous cases as well. I do not think and I do not  
18 find that Mr. Hall lied when he testified here, but  
19 there was a lot of prisoner movement over large  
20 periods of time in and out in this lockdown  
21 situation. As I said, a sizeable number returned to  
22 the unit on that particular occasion and even though  
23 Officer Hall was on station, there are times when  
24 people miss things. And my own determination here is  
25 that Officer Hall did not see or at least did not

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1 appreciate, if you will, the types of injuries  
2 inflicted on Mr. Washington and to which he  
3 testified. Maybe he didn't want to see it under all  
4 of the circumstances. I obviously can't  
5 psychoanalyze Officer Hall. And as I said, I don't  
6 think he came in here and expressly lied to cover  
7 this matter up, but I do not find it conclusive by  
8 any means that the fact that he did not see  
9 Mr. Washington in this condition means it didn't  
10 happen.

11 I have a similar analysis here with  
12 regard to the events in the back of the gym. We've  
13 also had testimony in several cases here by  
14 plaintiffs who have stated that they were taken to  
15 the back of the gym surrounded by seven or eight  
16 officers and beaten for minutes at a time. Now, both  
17 by the evidence in this case and otherwise there  
18 certainly were civilians present in the gym and in  
19 some cases at the back of the gym, including  
20 ombudsmen whose reports here have indicated no  
21 visible incidents of this description. But once  
22 again in this matter, as described by Mr. Washington,  
23 this is a very isolated and quick event in a small  
24 time frame. Basically, the SOGs brought him back  
25 there, slammed him up against the cage area and sat

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1 him down, whereupon some officer inside the cage area  
2 spit on him.

3                   By the way, other than for the purposes  
4 of its weight in establishing liability, I am not  
5 ascribing any particular injury either physical or  
6 emotional to the act of spitting, but it is, however,  
7 consistent with a retributive attitude in this case  
8 which I find does indeed assist the plaintiff in  
9 sustaining his proofs of the employment of excessive  
10 force in that incident.

11                  So once again, the fact that an  
12 ombudsman's report indicates no conduct of this kind  
13 doesn't absolutely preclude the fact that it happened  
14 in an instant, perhaps when the ombudsman's attention  
15 was not directed in this area of the gym or on the  
16 people involved. So I do make the determination  
17 that, in fact, Mr. Washington has sustained his case  
18 here and has sustained his proof of both the assaults  
19 upon him in his cell and in the gym.

20                  One further comment with regard to the  
21 testimony of Officer Hall and his presence as the  
22 supervising officer on the unit. I find it quite  
23 clear from the testimony, and with the structure of  
24 the cells in A Unit, that an event taking place  
25 completely inside the cell with SOG officers kicking,

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1       punching and prodding Mr. Washington to get under his  
2       bunk, is not in an area which Officer Hall would have  
3       observed from his normal duty station.

4                   I've also considered, of course,  
5       plaintiff's prior statements, D-690 and 691, and the  
6       cross-examination that took place on those. Once  
7       again, while particular bumps here or bruises there  
8       may not be mentioned in those exhibits as well as the  
9       trial testimony, I did not find that anything in  
10      those prior statements was so inconsistent with his  
11      testimony at trial as to cast doubt upon it.

12                  The assaults inflicted upon  
13      Mr. Washington, as I've determined them here, go well  
14      beyond the necessity of any proper law enforcement  
15      needs or any proper exercise of discipline or other  
16      legitimate penalogical purpose as well defined in the  
17      jury instructions which are incorporated here. There  
18      was no necessity to cram Mr. Washington under his  
19      bunk, no reason for the officers not to act  
20      reasonably to his protestations that there was  
21      material underneath his bunk that precluded him from  
22      going in there and no reason for the officers not to  
23      take a slightly altered course, either to allow him  
24      to clear the stuff out from under the bunk or to  
25      place himself on his bunk head down, face down, hands

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1 behind his back, facing the wall as was done in a  
2 number of instances here. So there were very  
3 legitimate options available to the officers there as  
4 alternatives to the course of action chosen. And  
5 indeed, of course, the force employed and the  
6 resulting injuries are very much the demonstration of  
7 the exercise of excessive force. There was indeed  
8 excessive, unnecessary and sadistic force imposed  
9 upon Mr. Washington within the contemplation of those  
10 legal principles.

11 Similarly, in the gym, it is not the  
12 least bit unreasonable to anybody with a minimum  
13 understanding of physiology that this man's legs fell  
14 asleep after an hour-and-a-half or two being seated  
15 in one position. Now, I'm not at all impugning the  
16 reasons to put the prisoners in one, uniform  
17 position, all of them being treated equally and in  
18 positions that would neutralize as much as possible  
19 the opportunity for any acts of aggression or other  
20 disturbances. But if there is a request after a  
21 lengthy period of time or even a manifestation of a  
22 need to shift position in some way for reasons such  
23 as this, there certainly is absolutely no need to  
24 address that situation by grabbing this man, hauling  
25 him to the back of the gym as if he were a severe

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1 disciplinary problem and then, of course, slamming  
2 him face first into a grid with the injuries that  
3 resulted and which could very foreseeably have  
4 resulted from that type of conduct.

5 Once again, there was no legitimate  
6 penalological purpose, no reason for the exercise of  
7 really any discipline let alone excessive discipline  
8 such as this by the SOG officers in the gym in  
9 response to this very natural physical phenomenon  
10 that occurred to Mr. Washington. In this instance  
11 also there was indeed excessive, unnecessary and  
12 sadistic force imposed upon him within the  
13 contemplation of those legal principles.

14 However, in light of the fact that  
15 these incidents were not prolonged or repeated, while  
16 indeed they are actionable for the recovery of  
17 compensatory damages, I do not find that in either  
18 case or even considered collectively that they have  
19 risen to the level of being so egregious as to  
20 support a claim for punitive damages, at least  
21 against the unidentified officers who were with  
22 plaintiff and inflicted the injuries.

23 I realize, of course, the fact that the  
24 officers were unidentified here, but there will come  
25 a time when the issue arises as to whether there is

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1 any significance to the conduct of the perpetrators  
2 regarding the plaintiff's efforts to establish  
3 supervisory liability. And whether either  
4 compensatory or potentially punitive damages can be  
5 applied under those circumstances remains an open  
6 issue. I do not however, as I said, impose those  
7 punitive damages on the actual perpetrators for  
8 reasons that I've just expressed.

9 Finally, although not every item of  
10 evidence has been discussed in this opinion/report,  
11 all evidence presented to the Special Master was  
12 reviewed and considered.

13 I find that the injuries inflicted here  
14 were actionable. I find that they were acute  
15 initially and to some extent remain permanent, namely  
16 the broken and disfigured finger. Although that  
17 doesn't significantly inhibit Mr. Washington's  
18 activities, it nevertheless is a permanent injury.  
19 The other inflictions upon him were painful at the  
20 time and did not go away immediately.

21 Accordingly, I recommend in this report  
22 that the district court enter an award of  
23 compensatory damages in the amount of \$5,500 in  
24 Mr. Washington's favor.

25

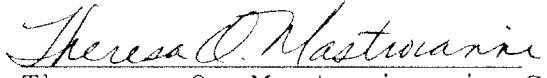
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1 C E R T I F I C A T E  
2

3 I, Theresa O. Mastroianni, a Notary Public and  
4 Certified Shorthand Reporter of the State of New  
5 Jersey, do hereby certify that the foregoing is a  
6 true and accurate transcript of the testimony as  
7 taken stenographically by and before me at the time,  
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a  
10 relative nor employee nor attorney nor counsel of any  
11 of the parties to this action, and that I am neither  
12 a relative nor employee of such attorney or counsel,  
13 and that I am not financially interested in the  
14 action.

15  
16  
17  
18  
19   
Theresa O. Mastroianni, C.S.R.  
20 Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
21 Certificate No. X10857  
Date: June 17, 2009  
22  
23  
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